

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO: G 5 of 2016

BETWEEN:

**LINDELL WELLINGTON
AUDREY WELLINGTON
BARRINGTON WELLINGTON
SHARON WATLER
LYNVAL WELLINGTON
LORNA BECKFORD
SANDRA WELLINGTON**

Plaintiffs

AND

DELROY WELLINGTON

Defendant

IN CHAMBERS

**Appearances: Mr. Phillip Ebanks, Attorney at Law for the Plaintiffs
Mr. Delroy Wellington, Respondent in person**

Before: The Hon. Justice Ingrid Mangatal

Heard: 29 August 2018

Delivered: 29 August 2018

Circulated: 3 September 2018



HEADNOTE

Civil Practice and Procedure – Application to Strike Out – Originating summons

TRANSCRIPT OF EX TEMPORE RULING

1. The Defendant applies by summons filed 16 November 2017, to strike out the Plaintiff's statement of claim and enter judgment on the following basis.



- 1(a) That the pleadings disclose no reasonable cause of action, pursuant to Order 18, rule 19(1)(a)
- 1(b) The Plaintiff's claim constitutes an abuse of process, pursuant to Order 18, rule 19(1)(d) and;
- 1(c) That the claim is frivolous and vexatious pursuant to Order 18 rule 19(1)(b).

There are further grounds or alternative grounds set out in paragraph 2 of the summons, as follows:-

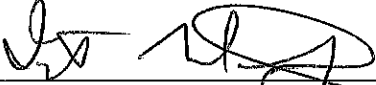
- a) Failure to comply with O.5, r.2*
- b) Failure to serve Notice of intention to proceed after six months' delay (O.3, r.6)*
- c) The plaintiff's failure to provide notice of change of their Attorney to the defendant pursuant to Removal of attorney from record at instance of another party (O.67, r.5 (b))."*

2. These proceedings were commenced by way of originating summons filed 12 January 2016.
3. In my judgment, the application should be refused. As regards the grounds set out in paragraph 2 of the summons, none of these are a basis for striking out.
4. As regards paragraph 1(a) of the summons, in my judgment there is no basis made out. Order 18 rule 19(5) (copy provided to the parties), makes it clear that "*On application to strike out an originating summons on the ground that it discloses no reasonable cause of action, the prohibition in paragraph (2) against adducing evidence on the application, does not itself apply to an affidavit already put in as supporting the originating summons.*"

5. Therefore, when the Court has regard to the originating summons (therefore not only the originating summons, but also the affidavits filed by the Plaintiffs in support of it), it is plain that there is a reasonable cause of action disclosed. The Plaintiffs are saying that the Defendant holds the Title to the subject property on trust for them as well as himself, pursuant to the wishes of their deceased father, Isaac Wellington. It is plain to me on the basis of the serious issues raised, and indeed put in issue, and contested by various affidavits already filed by the Defendant, that the claim is neither an abuse of process nor is it frivolous or vexatious. Indeed, these are very much issues that need to be tried.
6. Further, the Court takes into account the late stage at which the application is being made.
7. However, it does appear to me, that this case involves serious disputes as to fact. I accept the Plaintiff's attorney's submissions that there is nothing to suggest that these proceedings could not as originally filed, have been brought by originating summons. See Order 5 (Rule 2). However, I exercise the Court's power under Order 28 rule 8 (copy also provided to parties), to order the proceedings to continue as if begun by a writ of summons, and in the circumstances of this case, particularly since the Defendant is unrepresented by an attorney at law, and the Plaintiffs are legally aided, to order that the affidavits are to stand as pleadings.
8. I therefore make the following additional orders.
 - i. The parties are to file and serve supplemental affidavits, if so advised, by 12 September 2018.
 - ii. Affidavits are also to stand as evidence in chief, and the parties and all other affiants are to attend court for cross-examination on their respective affidavits.



- iii. The matter is to be set down for a 3 day trial in open court to come before any judge (except Justice Carter), on any available date after 12 September 2018.
- iv. Costs are to the Plaintiffs, to be taxed if not agreed.
- v. The Plaintiff's Attorney-at-Law, at the request of the court, is to prepare and file the Order for this hearing and email the same to the Defendant.


The Hon. Justice Ingrid Mangatal
JUDGE OF THE GRAND COURT

